

### REMARKS

In response to the outstanding Office Action, dated April 16, 2009, Applicants have carefully studied the references cited by the Examiner and the Examiner's comments relative thereto.

The courtesy of the Examiner in granting applicant's representatives an interview on June 23, 2009 is acknowledged with sincere appreciation.

Claims 1, 6, and 10 have been amended.

Claim 5 have been cancelled.

Claims 1-4 and 6-23 remain in the application for reconsideration by the Examiner.

The specification has been amended for clarity.

No new matter has been added.

Reconsideration of the application, as amended, is respectfully requested.

### Specification

The Examiner indicated that a new title is required, stating:

A new title is required that is clearly indicative of the invention to which the claims are directed. The title should include at least one technical, or inventive, feature of the claimed instant invention.

The title has been amended to read, "CONTAINER AND CLOSURE COMBINATION INCLUDING SPREADING AND LIFTING CAMS". As amended, the title includes an inventive feature, namely spreading and lifting cams, and is clearly indicative of the invention recited in the claims. Applicants respectfully request that the Examiner withdraw the objection to the specification.

### 35 U.S.C. § 112

The Examiner has rejected Claims 1-23 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Examiner stated:

Claim 1 recites the limitation "the first locking of said container" in lines 15-16. There is insufficient antecedent basis for this limitation in the claim.

Claim 10 appears to set forth an additional skirt. See claim 9 which sets forth "a skirt". Should these be the same skirt?

Claim 1 has been amended to include the limitation “the first locking means of said container” in original lines 15-16. Therefore, the limitation of “the first locking means” has a proper antecedent basis in Claim 1. Additionally, Claim 10 has been amended to recite “the skirt”, thereby referring to the “a skirt” recited in Claim 9. Applicants respectfully request that the Examiner withdraw the rejection under 35 U.S.C. 112.

35 U.S.C. § 102(b)

The Examiner rejected Claims 1-4, 8-10, 13-15, 18, 20, and 23 under 35 U.S.C. 102(b) as being anticipated by Northrup (U.S. 4,091,948), stating:

Disclosed is a container comprising a bottom wall, a sidewall defining a hollow interior, and a finish with a first locking means (52, 53); a closure comprising a second locking means (54) on a skirt depending from a top wall.

The Examiner rejected Claims 1-4, 8-12, 13-15, and 17-20 under 35 U.S.C. 102(b) as being anticipated by Gates et al. (U.S. 4,006,837), stating:

Disclosed is a container (5) comprising a bottom wall, a sidewall defining a hollow interior, and a finish with a first locking means (2, 3); a closure (1) comprising a second locking means (1c) on a skirt (1b) depending from a top wall (1a). See the figures showing both a cylindrical and polygonal cross section.

The Examiner also rejected Claims 1-6, 8-10, 13-15, 18, 20, 21, and 23 under 35 U.S.C. 102(b) as being anticipated by Lecinski, Jr. (U.S. 3,836,034), stating:

Disclosed is a container (13) comprising a bottom wall, a sidewall defining a hollow interior, and a finish with a first locking means (26-28); a closure (11) comprising a second locking means (17) on a skirt (15) depending from a top wall (14). See figure 2 showing a cylindrical cross section.

The Examiner further rejected claims 1-10, 18, and 20-22 under 35 U.S.C. 102(b) as being anticipated by Carson (U.S. 1, 333,245), stating:

Disclosed is a container (a) comprising a bottom wall, a sidewall defining a hollow interior, and a finish with a first locking means (c,e,g,h); a closure (i) comprising a second locking means (m) on a skirt (n) depending from a top wall. See figure 2 showing both a cylindrical cross section and spaced apart locking means. Alternatively, the second embodiment in Figs. 3 and 4 also show first locking means (s,t) on the container and second locking means (z) on the closure.

During the telephone interview with the Examiner on June 23, 2009, the Examiner suggested amending the claims to more positively recite structural limitations that further distinguish the Applicants' invention from the cited art. Accordingly, Claim 1 has been amended to recite:

1. (Currently Amended) A container and closure combination comprising:

a container including a bottom wall, an associated side wall defining a hollow interior, a finish having an outer surface and an inner surface, the finish providing communication with the hollow interior and having a central axis, and a first locking means on the outer surface of the finish including a spreading cam and a lifting cam; and

a closure to cover the finish of said container including a second locking means cooperating with the first locking means of said container, said closure having a central axis, whereby upon relative rotational movement of said closure and said container, the spreading cam causes the first locking means of said container and the second locking means of said closure are caused to flex away from one another transversely of the central axis of said container and said closure and the lifting cam to cause causes simultaneous relative axial motion of said container and said closure generally parallel to the central axis of said container and said closure to effectively separate said closure from the finish of said container.

Claim 1 has been amended to positively recite the structural limitation of “a first locking means on the outer surface of the finish including a spreading cam and a lifting cam”, wherein “the spreading cam causes the first locking means of said container and the second locking means of said closure to flex away from one another transversely of the central axis of said container and said closure and the lifting cam causes relative axial motion of said container and said closure”. (Emphasis added).

It was pointed out that none of the references discloses a first locking means **including a spreading cam and a lifting cam**, whereby the spreading cam causes the first locking means of a container and a second locking means of a closure to flex away from one another transversely of a central axis of said container and said closure and the lifting cam causes simultaneous relative axial motion of said container and said closure. Further, the simultaneous flexing and lifting of the closure relative to the container allows the container to be formed with a finish having various shapes such as square, triangular, or annular, for example. (See description in paragraphs [0034]-[0037] and illustration in FIGS. 4a-4d).

Claim 1, as amended, distinctly defines the Applicants' invention and distinguishes the same from the prior art of record. Additionally, Claims 2-4 and 6-23 depend, directly or indirectly, from Claim 1 and contain all the limitations thereof. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the rejection of Claims 1-4 and 6-23 under 35 U.S.C. §102(b) and issue a formal Notice of Allowance.

### 35 U.S.C. § 103(a)

The Examiner rejected claims 16 and 17 under 35 U.S.C. 103 as being unpatentable over Northup in view of Gates et al. (US4,006,837), stating:

Northup discloses the claimed container and closure combination except for a polygonal cross section.

Gates teaches it is known to provide a container and closure combination comprising a polygonal cross section.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a polygonal cross sectional shape to the container and closure combination of Northup to provide alternative known configurations for aesthetic purposes.

Claim 17 recites:

17. The combination defined in claim 1 wherein the cross-section of the finish of said container taken perpendicular to the central axis is polygonal.

As recited in Claim 17, the limitation of “polygonal” is referring to the finish of said container and not the overall aesthetic shape of the body of the container. A finish is known to one skilled in the art as a portion of the container that defines an opening for fluid communication with an interior thereof. Additionally, the finish is adapted to receive a closure for enclosing the opening of the container. The Examiner relies upon Gates to show a polygonal cross section of the finish of a container. However, in each of the Figures of Gates and throughout the specification, the finish of the container has an annular shape. Instead, Gates describes a container closure that may be formed into various polygonal shapes. Gates **does not** disclose a finish of the container having a polygonal shape. Further, none of the cited references, alone or in combination, teach any combination that would result in the Applicants’ invention as recited by Claim 17. Therefore, it is submitted that Claim 17 is not obvious under 35 U.S.C. §103(a) and is patentable.

The Examiner also rejected Claim 16 under 35 U.S.C. 103(a) as being unpatentable over Northup, stating:

Northup discloses the claimed invention except for the combination being formed of PET. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the combination of PET, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Doing so allows for use of a particular plastic material for its known qualities.

The Examiner further rejected Claim 23 under 35 U.S.C. 103(a) as being unpatentable over Gates, stating:

Gates discloses a sealing gasket, but is silent regarding the material composition.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the sealing member of elastomeric material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, USPQ 416. Doing so allows for use of a known sealing material used

for its sealing qualities.

Claim 1, as amended, is distinguishable from the cited art. For the reasons discussed above, it is submitted that Northup and Gates, alone or in combination, fail to teach any combination that will result in Applicants' invention. Therefore, it is submitted that Claim 1 is not obvious under 35 U.S.C. §103(a) and is patentable.

Since Claim 1 is deemed to be directed to patentable subject matter, Claims 16-17 and 23, which depend directly or indirectly therefrom, are likewise deemed to be patentable. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the rejection of Claims 16-17 and 23 under 35 U.S.C. §103(a) and issue a formal Notice of Allowance.

The other references cited by the Examiner, but not applied, have been studied and are not considered to be any more pertinent than the references relied upon by the Examiner.

In view of the amendments to the Claims and the above arguments, the Applicants believe that the Claims of record now define patentable subject matter distinguishable over the art of record. Accordingly, an early Notice of Allowance is respectfully requested.

While the Applicants' attorney has made a sincere effort to properly define Applicants' invention and to distinguish the same from the prior art, should the Examiner deem that other language would be more appropriate, it is requested that a telephone interview be had with the Applicants' attorney in a sincere effort to expedite the prosecution of the application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Donald R. Fraser', is written over a horizontal line.

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